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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA - FRESNO DIVISION**

OPTISTREAMS, INC.

Plaintiff,

v.

SEAN GAHAN and DOES 1-25

Defendants.

SEAN GAHAN

Counter-Claimant

v.

OPTISTREAMS, INC., JON HAUGAN,  
an individual, and ALISON HAUGAN, an  
individual

Counter-Defendants.

Case No. 05 CV-00117 REC SMS

**STIPULATION RE DISMISSAL  
WITH PREJUDICE AND ORDER  
THEREON (FRCP 41)**

Plaintiff Optistreams, Inc., Cross-Defendants Jon Haugen and Allison Haugen,  
and Defendant/Counter-Claimant Sean Gahan, by and through their respective attorneys of

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record, hereby STIPULATE and AGREE that the above-referenced action shall be dismissed with prejudice.

DATED: July \_\_\_\_, 2006.

SAGASER, JONES & HAHERSY

By: \_\_\_\_\_  
Howard A. Sagaser, Attorneys for  
Defendant/Counter-Claimant Sean Gahan

DATED: July \_\_\_\_, 2006

TRIAL & TECHNOLOGY LAW GROUP

By: \_\_\_\_\_  
Andrew Kislik, Attorneys for  
Plaintiff/Counter-Defendants Optistreams,  
Inc., Jon Haugen, and Alison Haugen

### ORDER

The parties seek dismissal of this action pursuant to Rule 41(a) of the Federal Rules of Civil Procedure. Rule 41(a)(1), in relevant part, reads:

an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action.

Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

Rule 41(a)(1)(ii) thus allows the parties to dismiss an action voluntarily, after service of an answer, by filing a written stipulation to dismiss signed by all of the parties who have

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2 appeared, although an oral stipulation in open court will also suffice. Carter v. Beverly Hills  
3 Sav. & Loan Asso., 884 F.2d 1186, 1191 (9th Cir. 1989); Eitel v. McCool, 782 F.2d 1470,  
4 1472-73 (9th Cir. 1986). Because Plaintiff has filed a stipulation for dismissal with prejudice  
5 as to all parties under Rule 41(a)(1)(ii) that is signed by all parties who have made an  
6 appearance, this case has terminated. See Fed. R. Civ. Pro. 41(a)(1)(ii); In re Wolf, 842 F.2d at  
7 466.

8 Therefore, IT IS HEREBY ORDERED that this action is DISMISSED and the Clerk of  
9 the Court is DIRECTED to close this case in light of the parties' filed and signed Rule  
10 41(a)(1)(ii) Stipulation For Dismissal With Prejudice.

11  
12 IT IS SO ORDERED.

13  
14 **Dated:** 2006

/s/ Anthony W. Ishii

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UNITED STATES DISTRICT JUDGE